



JANIK L.L.P.

9200 SOUTH HILLS BLVD., STE. 145
CLEVELAND, OH 44147

STEVEN G. JANIK
DIRECT: (440) 740-3099
DIRECT FAX: (440) 838-8141
CELL: (440) 832-9898
STEVEN.JANIK@JANIKLAW.COM

MAIL
P.O. BOX 470550
CLEVELAND, OH 44147

MAIN TEL: (440) 838-7600
MAIN FAX: (440) 838-7601

July 31, 2024

VIA FEDERAL EXPRESS
Rabaab Trucking LLC
9111 Taub Road
Houston, TX 77064

VIA FEDERAL EXPRESS
Rabaab Trucking LLC
c/o Process Agent
Workplace Compliance and Solutions, Inc.
213 Park Ave
Hereford, TX 79045

Re:	Insurance Company:	DB Insurance Co., LTD (US Branch)
	Insured:	Rabaab Trucking LLC
	Claimant:	Eddie Robinson and Sharyl Burris, Individually and Rudolph M. Culp as the Dependent Administrator of the Estate of Edderick Penton
	Date of Loss:	8/26/22
	Claim Number:	1E01E01608387X
	Policy Number:	TCA-P000300-00

Dear Rabaab Trucking LLC:

We represent DB Insurance Co., LTD. ("DB") with respect to the captioned matter. The purpose of this letter is to inform you of DB's coverage position.

On March 20, 2024, a Second Amended Petition was filed by Plaintiffs Eddie Robinson and Sharyl Burris, Individually and Rudolph M. Culp as the Dependent Administrator of the Estate of Edderick Penton against Graniti Vicentia, LLC ("Graniti"), Veryable Inc. ("Veryable"), and Rabaab Trucking LLC ("Rabaab"), in Cause No. 202363196, in the 129th Judicial District Court of Harris County, Texas. The Petition

July 31, 2024
Page 2

alleges that on August 26, 2022, Edderick Penton was working as an independent contractor, having been hired as a laborer by Veryable, who assigned him to Graniti's premises. While Mr. Penton was unloading sheets of tile from a box trailer, improperly secured sheets of tile fell on him from an A-frame pallet, pinning him to the inside of the box trailer, and causing injuries that ultimately resulted in his death. It is alleged that the truck and box trailer were owned and operated by Rabaab.

We understand that Rabaab owns the trailer at issue, that it was hired to pick up a load from one Graniti facility and take it to another Graniti facility, and that Graniti packed the load. The trailer was then left at Graniti, who at least 10 days later, unloaded it themselves without anyone from Rabaab present. ***If this understanding is incorrect in any way, please advise. Please provide information concerning the trailer at issue, including title/registration, as well as any information available regarding this load.***

DB issued Policy No. TCA-P000300-00 to Rabaab, having a Policy Period of May 24, 2022 to May 24, 2023 ("Policy"). The Policy provides Liability Coverage for Covered Autos as designated by Symbols 67, which means "Only those 'autos' described in Item Three of the Declarations for which a premium charge is shown (and for Covered Autos Liability Coverage any 'trailers' you don't own while attached to any power unit described in Item Three)." The only trailers listed on the Vehicle Schedule are "Non-Owned".

July 31, 2024
Page 3

Section II – Covered Autos Liability Coverage provides, in pertinent part:

SECTION II – COVERED AUTOS LIABILITY COVERAGE

A. Coverage

We will pay all sums an “insured” legally must pay as damages because of “bodily injury” or “property damage” to which this insurance applies, caused by an “accident” and resulting from the ownership, maintenance or use of a covered “auto”.

* * *

We will have the right and duty to defend any “insured” against a “suit” asking for such damages or a “covered pollution cost or expense”. However, we have no duty to defend any “insured” against a “suit” seeking damages for “bodily injury” or “property damage” or a “covered pollution cost or expense” to which this insurance does not apply. We may investigate and settle any claim or “suit” as we consider appropriate. Our duty to defend or settle ends when the Covered Autos Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

If Rabaab is not legally required to pay damages because of “bodily injury” or “property damage” to which this insurance applies, caused by an “accident” and resulting from the ownership, maintenance or use of a covered “auto”, then the suit may not fall within the Insuring Agreement of the Policy and defense and/or indemnity under the Policy may not be available. We do not have any information on the trailer at issue, but if it was owned by Rabaab then it does not appear to be a covered “auto” under the Policy. Accordingly, DB reserves all rights with respect to this matter.

The Exclusions of the Policy provide:

B. Exclusions

This insurance does not apply to any of the following:

1. Expected Or Intended Injury

July 31, 2024
Page 4

“Bodily injury” or “property damage” expected or intended from the standpoint of the “insured”.

* * *

7. Handling Of Property

“Bodily injury” or “property damage” resulting from the handling of property:

- a.** Before it is moved from the place where it is accepted by the “insured” for movement into or onto the covered “auto”; or
- b.** After it is moved from the covered “auto” to the place where it is finally delivered by the “insured”.

8. Movement Of Property By Mechanical Device

“Bodily injury” or “property damage” resulting from the movement of property by a mechanical device (other than a hand truck) unless the device is attached to the covered “auto”.

If the injuries to Mr. Penton were expected or intended from the standpoint of Rabaab, then Exclusion B. 1 may apply, such that defense and/or indemnity under the Policy may not be available. Accordingly, DB reserves all rights with respect to this matter.

If the injuries to Mr. Penton resulted from the handling of property after it was moved from the covered “auto” to the place where it is finally delivered by Rabaab, then Exclusion B. 7 may apply, such that defense and/or indemnity under the Policy may not be available. Accordingly, DB reserves all rights with respect to this matter.

If the injuries to Mr. Penton resulted from the movement of property by a mechanical device not attached to the covered “auto”, then Exclusion B. 8 may apply,

July 31, 2024
Page 5

such that defense and/or indemnity under the Policy may not be available. Accordingly, DB reserves all rights with respect to this matter.

We also bring to your attention the Exclusion – Punitive or Exemplary Damages Endorsement, which provides that “This insurance does not apply to any punitive or exemplary damages.” Because the potential for an award of exemplary damages exists, which is not covered by the Policy, DB recognizes the right for Rabaab to be represented by counsel of their choice with respect to this exposure, at their sole and exclusive cost and expense. Accordingly, DB reserves all rights with respect to this matter.

The Exclusion – Broker Liability Endorsement provides:

- I.** The following is added to **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, paragraph **B. Exclusions**:
 - a.** Liability arising out of your operations or activities as a “Freight Broker”.
 - b.** Liability arising out of the operation, maintenance or use of any “auto” by any trucker hired, selected or retained by you for the purpose of transporting property.
 - c.** Liability arising out of negligent hiring, retention or selection of any trucker.
 - d.** Liability assumed under or arising out of any contract or agreement made in connection with your operations or activities as a “Freight Broker” or otherwise for the purpose of arranging for the transportation of property by a trucker. This exclusion applies to liability assumed under any such contract or agreement regardless of whether the contract is an “Insured Contract”.
- II.** The following is added to the **DEFINITIONS** section of the Coverage Form:

July 31, 2024
Page 6

"Freight Broker" means any person or corporation who, for compensation, arranges or offers to arrange the transportation of property by any trucker.

All other terms and conditions of the policy remain unchanged.

If Rabaab was acting as a "Freight Broker", then the Broker Liability Exclusion may preclude defense and/or indemnity under the Policy. Accordingly, DB reserves all rights with respect to this matter.

DB also brings to your attention the following Conditions of the Policy:

SECTION V – MOTOR CARRIER CONDITIONS

The following conditions apply in addition to the Common Policy Conditions:

A. Loss Conditions

* * *

2. Duties In The Event Of Accident, Claim, Suit Or Loss

We have no duty to provide coverage under this policy unless there has been full compliance with the following duties:

- a.** In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident" or "loss". Include:
 - (1)** How, when and where the "accident" or "loss" occurred;
 - (2)** The "insured's" name and address; and
 - (3)** To the extent possible, the names and addresses of any injured persons and witnesses.
- b.** Additionally, you and any other involved "insured" must:

July 31, 2024
Page 7

- (1)** Assume no obligation, make no payment or incur no expense without our consent, except at the "insured's" own cost.
- (2)** Immediately send us copies of any request, demand, order, notice, summons, or legal paper received concerning the claim or "suit".
- (3)** Cooperate with us in the investigation or settlement of the claim or defense against the "suit".
- (4)** Authorize us to obtain medical records or other pertinent information.
- (5)** Submit to examination at our expense, by physicians of our choice, as often as we reasonably require.

DB respectfully reminds Rabaab that they have a duty to cooperate with DB in the defense of this matter, including but not limited to being required to immediately send any request, demand, order, notice, summons, or legal paper received concerning the claim or "suit". Further, if Rabaab has other insurance that may apply to this matter, then the DB Policy will apply in accordance with the Condition 5., Other Insurance – Primary And Excess Insurance provisions. Accordingly, DB reserves all rights with respect to this matter.

Please also note the Policy includes Form MCS-90, Endorsement for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980. If coverage under the Policy does not apply and payment is made on behalf of Rabaab under the MCS-90 Endorsement, then Rabaab is required to reimburse DB for any such payment. Accordingly, DB reserves all rights with respect to this matter.

July 31, 2024
Page 8

Subject to this reservation of rights, DB will provide Rabaab with a defense in this matter. In this regard, DB has retained Litchfield Cavo LLP as defense counsel for Rabaab. Please cooperate with counsel in the defense of this matter.

We also respectfully bring to Rabaab's attention that they have the right, at their sole cost and expense, to consult counsel of their choice with respect to any issues raised in this reservation of rights.

DB's reservation of rights with respect to this matter, is not, and should not be construed as an admission that Rabaab are entitled to coverage for this matter under the Policy, a waiver of any misrepresentations, breach of warranties, violations of common law, statute, regulations, public policy, or equity, a waiver of any Insuring Agreements, Exclusions, Conditions, Definitions, Endorsements and/or other provisions of the Policy, or a waiver of any rights that DB has with respect to this matter.

To the contrary, DB specifically reserves all rights with respect to this matter, including but not limited to the right to decline defense and/or indemnity, to withdraw its defense, to recoup any fees, expenses, or costs incurred in defense of this matter, to recoup any amounts paid as indemnity for uncovered claims, to recoup any amounts paid pursuant to the MCS-90 Endorsement, to allocate any payments, whether defense or indemnity, between or among covered and uncovered claims and/or causes of action, to cancel, reform, and/or rescind the Policy, and/or seek declaratory relief and/or interpleader with respect to any issues arising out of this matter, whether during or after its adjudication.

July 31, 2024
Page 9

In addition, DB respectfully reserves the right to amend, modify, supplement, or withdraw this reservation of rights.

We are available at your convenience should you have any questions concerning the foregoing, or should you wish to provide any further information for DB's consideration. Should you, however, wish to contact the Texas Department of Insurance, they can be reached at: P.O. Box 12030, Austin, Texas 78711-2030, (800) 252-3439.

Very truly yours,
Steven G. Janik
Crystal L. Maluchnik
Steven G. Janik
Crystal L. Maluchnik